

Sample Essay #3

3. Torts are personal wrongs and equate to a duty of care wasn't met. A tort that involves intentional or negligent infliction of emotional distress, doesn't require the plaintiff to prove that the falsely written publication was misrepresented as truth. Therefore, in order for the plaintiff to win an emotional distress case, he or she must prove extreme or outrageous conduct, malicious intent and emotional distress that was so severe it caused bodily harm.

In order for a publication to qualify for extreme or outrageous conduct, it must exceed the bounds of decency. The conduct needs to demonstrate that it goes beyond mere opinion, malicious intent, offensiveness or harm, and that it delves into behavior that's questionable. Plaintiffs (especially public figures) typically have a difficult time arguing for emotional distress because they are expected to have a thick skin. Courts presume that the plaintiff can handle rude and nasty comments, which arguably, people have the first amendment right to express. In addition, plaintiffs in an emotional distress/ defamation case normally argue that their commentary was hyperbole or satire. However, behavior that is deemed grossly offensive and intolerable can also be considered extreme or outrageous.

Furthermore, malicious intent must occur in order to argue for emotional distress. The defendant must have intentionally carried out the action knowing that the plaintiff would experience severe emotional distress. The defendant must exhibit gross (or in some cases, simple) negligence, meaning that they had a complete disregard for that person's mental health and well-being.

Conclusively, the plaintiff must prove that they experienced severe emotional distress. Emotional distress can adopt many different forms - grief, shame, fear or anger. However, in order for it to qualify as severe, it must exceed all those categories. Although there are no set criteria for what passes as severe, the plaintiff must prove to the court that the emotional distress was so harmful and devastating, that it warrants monetary compensation. The guidelines for severe emotional distress include the intensity and duration. For instance, if the emotional distress is deeply disturbing and consistent, it could merit a financial award for the plaintiff. The act that caused the emotional distress has to fit a certain context, one that is so appalling that emotional distress is automatically assumed. The jury needs to feel like the emotional distress caused is something that no reasonable person has to endure, another instance where this can be shown is bodily harm that requires hospitalization.

An example of an emotional distress case in which the plaintiff will prevail is if that person reads a publication about them that is particularly is shocking and nasty. The plaintiff is a minor public figure who's pregnant with her first child. The publication does not approve of her profession, which is a sex therapist. The woman markets sex toys and hosts a weekly podcast about sexual intercourse. The conservative, extremely-right wing magazine not only critiques her advertisement of sex toys as being "disgusting" and "immoral," but says that they

hope her baby comes out stillborn. This commentary is so outrageous and extreme that it disturbs the court. In addition, it caused bodily harm on the plaintiff, who upon reading the article, experienced an emotional distress so severe that it caused her to miscarry. This case guarantees that the woman is financially compensated for the emotional damages incurred from this publication.

On the contrary, a case that would not win on the grounds of emotional distress is one that promotes satire. For example, a magazine that is known for being risky and provocative publishes an explicit cartoon of a well-respected religious public figure in its latest issue. The cartoon questions the public figure's credibility within the church by making him or her perform lewd acts in an outhouse with their mother. The person sues for emotional distress and defamation of character but doesn't win because the drawing itself is hyperbole and satire. The depiction wasn't taken seriously by the public and the content itself wasn't extreme or outrageous enough to be considered disturbing. Although it was nasty and insensitive, the plaintiff is expected to have a tough skin because he or she is a public figure. In addition, the plaintiff seemed merely offended by the drawing and not in severe emotional distress.

4. Craigslist is a classified advertisements website that allows users to post resumes, housing, job listings, etc. As a way to avoid liability from delivering tortious and copyright infringing content, Craigslist insulates itself under two laws, contract law and section 230 of the Communications Decency Act (CDA).

Contract law creates an enforceable agreement that is legally binding, even if the user didn't read all the terms and conditions. The agreement normally includes a clause that prevents the website from being sued. Craigslist has users sign a terms and conditions contract before they're allowed to publish their advertisement on the site, that way, the website has the user's signature and consent in writing. Once the terms and conditions are agreed upon, the user is entirely responsible for what he or she posts, with Craigslist merely acting as the intermediary that disseminates the content.

Meanwhile, a piece of legislation that largely protects many websites from being sued for posting certain content is section 230 of the Communications Decency Act. This law does not hold internet intermediaries legally accountable for what others post. In fact, not only do internet service providers (ISPs) qualify for protection, but third-party websites that facilitate user content as well. Craigslist is a third-party platform that allows consumers to create content on their site, thus granting them section 230 protections. Craigslist is not expected to remove any objectionable content from its site because it's supposed to be a platform for free speech and innovation. The site is not responsible for monitoring content unless it's in good faith.

However, despite the liability exemption, Craigslist nevertheless dropped its "hook up" ads because of the new sex trafficking bill. The bill combines the Fight Online Sex Trafficking Act

(FOSTA), with the Stop Enabling Sex Traffickers Act (SESTA). These acts make third party websites like Craigslist more liable for what it's users post on their page and is supposed to discourage prostitution. Craigslist would rather take cautionary and preventative measures than risk criminal prosecution. This is a minor blow to first amendment freedoms because the advertisements facilitated consensual sex, meaning that both parties were aware and willing to engage in sexual activities. The fact that this section of the website has now been taken down, reveals that certain content on websites can be subject to removal, regardless of how flexible the website may seem. The Craigslist situation demonstrates that there is a limit to free speech.